problems can sometimes be treated very effectively. But can someone who has one point has a diagnosis or some sort of reading problems later become successful through appropriate intervention? Absolutely.

Q. Aren't there in fact very well known business and political leaders who have been widely reported as having either ADHD or dyslexia?

A. I don't think that relates to your prior question, because I would just say in those cases, we rarely have the sort of evidence to review to know whether or not that's the case. Historical figures are often said to have had dyslexia or ADHD. We never know that to be the case.

Q. Okay. Well, whether -- forget about my previous question. Answer this question.

Isn't it true that there are well known political and business figures who have been widely reported as having either ADHD or dyslexia?

A. I certainly have heard of famous people who it is claimed have ADHD or dyslexia.

Q. I believe that there have been such reports about Charles Schwab, for example?

A. I have heard of that.

Q. And about Sir Richard Branson?

A. I heard of that as well.

Q. And about David Boies, the attorney?

A. Yes.
Q. Leading attorney.
A. I have heard that claim.
Q. And one that I remember from long ago in my life, former vice president and former governor Rockefeller. Correct?
A. I don't know that I've heard of that particular case of purported disability or dyslexia or ADHD. I don't know the details of what you're referring to there.
Q. Do you believe that somebody who has ADHD can successfully become a physician?
A. I don't think there's anything about having ADHD per se that would prevent someone from becoming a physician. ADHD is heterogenous in terms of its level of severity. And again, with appropriate intervention, and at times accommodations, I don't think that it would be impossible for someone to both meet the criteria at some point, perhaps, prior to intervention, and then be able to be a physician.
Q. Do you believe that -- same question for dyslexia. Do you believe that somebody with dyslexia could successfully complete training and practice as a physician?
A. Again, with dyslexia, I'm hesitant to say much about that term, but for a learning disability in reading with appropriate intervention, someone who at one point -- or accommodations, someone who at one point met criteria for a learning disability in reading may well be able to be a successful physician.

Q. Have you in your work as a reviewer for NBME ever made a recommendation for an extended testing time accommodation --
A. I'm sure --
Q. -- for a student on any of the step exams?
A. I'm sure I have.
Q. And do you remember what -- what the diagnosis was that the request was based on in that case or in those cases?
A. I am sure there have been multiple times when I've recommended it. The diagnoses would vary, but, I mean, I don't remember -- we're not talking about a particular instance, so I typically review cases where learning disabilities and ADHD are at least part of the list of diagnoses that someone is requesting accommodations under, but I can't --
Q. So again, just in general, not right now specifically referring to Ms. Ramsay, can extended testing time be an appropriate accommodation for someone who has ADHD?
A. There are times when that would be an appropriate accommodation.
Q. And can extended testing time be an appropriate accommodation for somebody with dyslexia?
A. Yes, there are times when that would be an appropriate accommodation.
Q. We discussed earlier some of the tests that Dr. Smith did. I think we talked about the WIAT-information and the Nelson-Denny and the GORT and also I think the Woodcock-Johnson

IV.

Are any of those tests tests for which somebody can study, that is, the person who is taking the tests, who is being evaluated, can you study for that test?

A. I mean, if by study you mean prepare, I'm trying to think about how one would study for those sorts of tests.

Unless you found -- I suppose you could find out information by looking them up, but I don't think of those as tests that people typically study for.

Q. And actually, isn't it true that the publishers of those tests go to great lengths to make sure that the tests are not publicly disclosed?

A. It's true. I mean, some tests there are available things online about them, the Nelson-Denny in particular. But it's true that some of those tests would not generally be studied for. I wouldn't expect that to be typical.

Q. By contrast to those tests, the MCAT is a test for which you could study. Correct?

A. Yes.

Q. And the ACT is a test for which you could study?

A. Yes.

Q. Were you present yesterday when Ms. Ramsay testified about the way in which she took the MCAT?

A. I believe so.

Q. And particularly, you might recall -- and I don't know

whether you've had an opportunity to see this, but there was an exhibit that was marked in which she had marked up a form of the verbal reasoning section of the MCAT.

Have you see that exhibit?

A. I have not. I remember being present when it was discussed, but I haven't seen it.

MR. BERGER: Your Honor, the exhibit to which I'm referring -- and, Professor Lovett -- Professor Lovett, the exhibit to which I'm referring was marked as P-19A yesterday. It's not in the binders, so I don't know whether a copy is readily available. I have one copy that I can show the witness, and I can --

THE COURT: Did you give it to the Court?

MR. BERGER: Yes, yes, we did. We did give a copy to the reporter.

This is it.

THE COURT: All right. Take it up to him.

BY MR. BERGER:

Q. Have you reviewed this exhibit before?

A. No.

Q. All right. Let me direct your attention to the pages that have the numbers 29 and 30.

A. Okay.

Q. And you'll see that on page 29 is a copy of a -- is a reading passage. And then on page 30, there are several

questions that are based on the reading passage.

A. I see.

Q. In each of these, Ms. Ramsay had marked up the document. This was, by the way, a document that was marked during her deposition. And so she took that and marked up a copy of it as she explained yesterday to indicate how she would have approached these questions.

Look at page 30 and question number 44.

A. Okay.

Q. And Ms. Ramsay in her comments said she would have tried to answer this one first. And that you see the question itself refers to the fourth paragraph, so the question gives you a specific reference, and she would have read the fourth paragraph and answered based on that.

Is that approach to a question like this that would reduce the amount of reading that she would have had to do?

A. Well, with regard to the question -- with regard to question 44, reading the fourth paragraph to answer that as opposed to reading the whole paragraph -- or rather the whole passage would be less reading, so...

Q. All right. And then she indicates that she would then have tried question 43 based on having read paragraph 4 and so forth.

I mean, my general -- what I'm trying to get at here, and I think now let's refer back to your report, the report that

you submitted. It will just take me a little bit, because I have to find it in the defendant's binder. And I think it's Exhibit 6 and Tab B.

You knew from --

A. I'm at Defendant's 6, B now.

Q. All right. Now, the exhibit we were looking at a moment ago was part of the verbal reasoning test, the MCAT verbal reasoning test.

THE COURT: Is that a question or a statement?

MR. BERGER: I'm just reminding the witness of what we were talking about.

BY MR. BERGER:

Q. We were looking at Exhibit P-19A. That is Ms. Ramsay's notes about the verbal reasoning test, about an MCAT verbal reasoning test.

A. I can't speak to what it is. I don't know that you described, and I don't recall from yesterday whether this is a release test or a practice test, so I can't comment on that, but...

Q. All right. In Ms. Ramsay's request for accommodations, she commented about the MCAT.

Do you remember what generally she said about her performance on the MCAT?

A. I remember more I think from the testimony that I've heard -- and it's hard to distinguish whether there was a

difference between those two things, but I remember her describing strategies that she used to try to avoid significant reading --

Q. All right.

A. -- on the MCAT, which she reports having used.

Q. All right. Now, you, in your report -- and now I am referring to DX-5, Tab B, which is your report.

A. I think it's DX-6.

Q. I'm sorry, DX6. Which is your report at -- it's page 2 of your report, page 35 of the overall, but page 2 of your report.

In the carryover paragraph at the top of page 2, you say that you were extremely skeptical that Ms. Ramsay possesses a special way of answering ACT and MCAT items without actually reading relevant text. And you go on to say, still quoting, and it is disappointing that her credulous advocates have accepted her explanation, unquote.

But we just reviewed something that shows that you could answer at least one question on the MCAT without reading the entire reading test.

Do you agree?

A. I agree that for item I believe 44 it was that -- I don't believe that I said that in my testimony. I think I agreed that it would be less reading to read the fourth paragraph than to read the entire passage, which is I believe what you had asked.

Q. No, that is what you said. And --
A. And so I don't believe that I made any comment about whether or not any of these strategies were used and whether or not they could be used to take the MCAT in its entirety.
Q. Well, you don't know, do you? You've never taken the MCAT. Correct?
A. I haven't taken the MCAT.
Q. And you've never been a reviewer for the MCAT, have you?
A. I've never reviewed accommodation requests for the MCAT.
Q. But one of the things that you emphasized in your report as what you called a real world example that showed that -- or that caused you to question whether Ms. Ramsay had dyslexia, one of the things that you cited in your report was her score on the MCAT. Correct?
A. Yes.
Q. And yet you're telling me that you haven't taken the MCAT yourself?
A. I've never applied to medical school.
Q. Okay. And you don't know -- is this -- let me approach this a different way.

I think you have said or someone from NBME has said that, oh, yes, everybody uses that strategy, something like that, the strategy of not reading as much. I don't know whether that's in your report. I can look for it.

But is that, to your knowledge, a widely used strategy for

people taking a test like the MCAT?
A. I'm familiar with different strategies of taking tests, and I've even done some research on it. I know that it's common, as I say in my report, for people to read questions first and then go to the passage afterwards, and as I say, to search for relevant information in the passage. So I believe that is common. And I've done some research consistent with that, that has demonstrated that. But as I say in my report, that still involves reading a substantial amount of text.
Q. Can that strategy be used in the USMLE Step 1?
A. I don't know that there's a difference between those. I can't really speak to the differences with regard to what strategies would and would not work in that regard. As was discussed so far, the questions have a somewhat different format, but -- in that they tend to be a single vignette about a patient followed by a question about the scenario. But beyond that, I've never actually considered whether or not different strategies would be appropriate.
Q. All right. Do you recall that Dr. Smith in his report referred to several different measures of reading fluency?
A. Yes.
Q. And I think that we reviewed some of these or NBME's counsel reviewed some of these with you before today. But do you recall, for example, that he found that -- and I can refer you to pages, if that would be helpful. But he found reading

comprehension and fluency according to the WIAT-information, he found at the 4th percentile. Correct?

A. I would have to check the specifics about the 4th percentile, but I remember that there were low scores on --

Q. Okay. It's DX-3 and Tab B, which is his report, Dr. Smith's report. Tell me when you're there.

A. I think it's Tab B?

Q. Yeah, I'm sorry.

A. Okay.

Q. I think that's what I said, Tab B.

A. Okay. I'm at the WIAT-information table of scores on page 18 of 31 of the report.

Q. Well, yes. Actually, there are references both -- I was looking at page 16, but, yes, there are references on page 18. And that's fine.

So reading comprehension and fluency, 4th percentile?

A. Yes. I don't know that we discussed that particular score earlier, but I'm just reading fluency, that's reading comprehension and fluency, that was at the 4th percentile.

Q. Yeah. And he also refers to the GORT-5 and to -- and I think we did discuss these before. I think you referred in your testimony before to the little table that's in the middle. Oh, that -- I'm sorry, that's Woodcock-Johnson still. So let's look at that too.

In the middle of page 21 of the report, there is a table

of scores from the Woodcock-Johnson. And that shows a reading rate score at the 1st percentile. Correct?

A. Yes.

Q. And a sentence reading fluency at the 7th percentile and word reading fluency at the 0.2 percentile?

A. Yes.

Q. And then on the same page below that, there is a discussion of the rate score from the GORT on the last paragraph on the page, rate score of 3, which is at the 1st percentile and an accuracy score of 5, which is at the 5th percentile. And then over on to the next page, on to page 22, fluency measure, which is from combining the rate and accuracy scores. And that's at the 2nd percentile.

So we have three different assessments that Dr. Smith administered. And you accept that he administered them, you accept -- haven't personally confirmed, but you accept that he's reporting accurately how Ms. Ramsay performed. And I think you also testified before the break that these were all appropriate things to consider in considering a diagnosis of dyslexia.

Does the fact that there are three different instruments that he administered would show a consistent pattern of results, is that something that should be considered in making this decision?

A. Should it be considered, absolutely. In this particular

case, this does not suggest that there is a learning disability in reading. Should all of the scores be considered, certainly.

Q. In looking at a result like the MCAT result in Ms. Ramsay's case, or the ACT result in Ms. Ramsay's case, is it important to know how she got whatever score she got?

A. It's important to consider -- I believe it's important to consider all of the information that an applicant provides when they submit a request for an accommodation. And so if someone describes a strategy which they report having used when they took a test, it certainly is something that should be considered and that I do consider. Like any information, it has to be weighted with regard to its credibility, its accuracy, its consistency with other information.

Q. All right. You spoke this morning about her report cards from elementary school. And I think you must have heard her testify yesterday and today about the informal help, not documented, but the informal help that her teachers provided for her.

And in this proceeding, it's not for you or me to decide who is telling the truth and who is not telling the truth. That's the judge's job.

But if what Ms. Ramsay testified is true about the way in which her teachers helped her, is that something that should be considered in looking at those report cards?

A. When I review the request, I certainly consider all

information -- I guess I should say when I reviewed the request, I don't believe I had access to the report cards. So I apologize, could you ask your question again?

Q. Well, but you did refer to the report cards in your testimony this morning.

A. Yes, uh-huh.

Q. And you heard Ms. Ramsay's testimony about how her teachers assisted her during those grades. So is that something that should be considered in evaluating those report cards?

A. Descriptions of people's experiences, what their teachers in the school, should certainly be considered when making any sort of decision about diagnosis or accommodation needs. And as with other information, like test scores, it has to be weighted with regard to its credibility, accuracy and consistency.

Q. And you did have information about Ms. Ramsay's experiences in primary school in her personal statement. Correct?

A. I believe so. I'd have to check, but I believe that there were reports relating to her childhood. I would have to check again my report or her submission.

Q. I believe that you said that you have been working as a reviewer for NBME for nine or ten years?

A. Yeah, I believe it's been about nine maybe.

Q. And how are you paid for your services to NBME?
A. For reviewing requests, I'm paid by the hour. Currently I received $200 an hour for reviewing requests.
Q. And for testifying?
A. For testifying, instead it's based on days and half -- it's a day rate, so it's $2,000 for a full day, $1,000 for a half day, I believe.
Q. Does NBME have an annual conference for its reviewer consultants?
A. It has a meeting, yes.
Q. And have you attended those conferences?
A. Most years for the past nine, I believe so.
Q. Okay. Let me just ask you to look very briefly at exhibit -- and this is in the plaintiff's binder, so I may need to help find that for you, but it's P-34 that I want you to look at very briefly.
A. I think I just have the defendant's exhibits.
Q. Not in -- and 34, P-34.
A. Okay. I'm there.
Q. All right. Can you identify for the record what P-34 is?
A. This appears to be slides from a presentation for NBME and its outside consultants about ADA.
Q. And what was the date?
A. December 5, 2016.
Q. Who was the presenter?

A. Robert Burgoyne.
Q. And do you recall attending the conference that year?
A. Not specifically, but I was likely there. As I said, I've attended the vast majority of the meetings since I've been working with them.
Q. Do you know if Professor Zecker also attends those conferences?
A. Yes.
Q. And Mr. Burgoyne is NBME's counsel. Correct?
A. I know that he represents NBME in some cases. I don't know the exact title or relationship.
THE COURT: We can take notice of that, Counsel. Moving along.
BY MR. BERGER:
Q. Am I right that prior to yesterday when Ms. Ramsay testified and you were in court, you had never met Ms. Ramsay before?
A. Yes.
Q. And you've never done yourself any evaluation of Ms. Ramsay by administering testing instruments to her or interviewing her, anything of that kind. Correct?
A. No. That is correct.
Q. In your review of her application, what consideration did you give to the fact that her medical school had provided her with various testing accommodations?

A. I certainly gave that, you know, some weight in terms of considering someone's history of accommodations. I always consider that. It's really impossible to interpret the data in someone's file without knowing their history of accommodations. When you're looking at someone's history of performance, you have to know when did they receive them, when did they not receive them. So to me that's very important information.

Q. And would you say the same thing with respect to the accommodations she received from Ohio State University?

A. Yes. Again, it doesn't mean the likely -- the information about the medical school, it doesn't mean that someone needed them then or needs them now, but it certainly is very important information to know when you're interpreting everything in the file.

Q. Do you know whether Ms. Ramsay was taking ADHD medication at the time that she took the MCAT?

A. I don't recall whether that information was in the documentation.

MR. BERGER: Your Honor, can I just have one minute to consult with my colleagues?

THE COURT: Sure.

MR. BERGER: Your Honor, I would like to offer in evidence P-34, which is the presentation from the 2016 NBME consultants meeting that Professor Lovett testified about.

THE COURT: Any objections?

MS. MEW: No objection, Your Honor.
THE COURT: It's admitted.
(Exhibit P-34 admitted into evidence.)
MR. BERGER: I have no further questions.
THE COURT: Very well. Any redirect?
MS. MEW: No redirect, Your Honor.
THE COURT: Very well. So you may step down.
And Counsel, this witness can be excused?
MS. MEW: Thank you, Your Honor.
Is that all right with plaintiffs?
THE COURT: Yes. I'm asking counsel, is there any reason to keep this witness around?
MR. BERGER: No.
THE COURT: You can be excused, sir.
THE WITNESS: Thank you, Your Honor.
THE COURT: Next.
MS. MEW: Your Honor, the defense would like to call Dr. Steven Zecker.
THE COURT: Very well.
Watch your step coming around there, sir, and also around here.
DR. STEVEN ZECKER, after having been duly sworn, was examined and testified as follows:
COURT REPORTER: Please state your name.
THE WITNESS: Steven Zecker.

DIRECT EXAMINATION

BY MS. MEW:

Q. Good afternoon, Dr. Zecker.

A. Good afternoon.

Q. Are you an external consultant for NBME?

A. Yes, I am.

Q. And how long have you served in that capacity?

A. 16 years, I believe.

Q. And can you briefly explain what you do in that role?

A. As Professor Lovett described, I receive documentation submitted by applicants for accommodations and review it and provide my professional opinion about that.

Q. Did you review Jessica Ramsay's request for testing accommodations on the USMLE?

A. Yes, I did.

Q. And just to get the timeline in your role, I understand that you reviewed her first request in December 2016.

A. Yes.

Q. Correct?

And then she submitted another request in June of 2018.

Did you review that request?

A. Yes.

Q. And then when she sought reconsideration, that's the request that Dr. Lovett reviewed; is that correct?

A. Yes.

Q. For your reviews, did you provide a written analysis and recommendation for NBME following review?

A. I did.

Q. If you will please look at volume 1 of the defendant's exhibits, we're going back to the black binders.

Dr. Zecker, if you would please turn to Exhibit 5. That's Exhibit 5.

A. Okay.

Q. Do you recognize this document?

A. Yes.

Q. And is this a declaration that you prepared in connection with this litigation?

A. Correct.

Q. And then Tab A to Exhibit 5, is this a copy of your CV at the time you submitted this declaration in August of 2019?

A. Yes, it is.

Q. Then Exhibit B, is this your January 13, 2017 recommendation letter to NBME for Ms. Ramsay's first question for testing accommodations?

A. Yes, it is.

Q. And finally, turning to Exhibit C, is this your July 19, 2018 recommendation letter to NBME with respect to Ms. Ramsay's second request for testing accommodations?

A. Yes, it is.

Q. Dr. Ramsay (sic), are the opinions expressed in these

documents, do they remain your opinions today?
A. Yes.
MS. MEW: Your Honor, the defendants would like to offer Exhibit 5 to the record.
THE COURT: Hearing no objections, they're admitted.
(Exhibit DX-5 admitted.)
BY MS. MEW:
Q. Dr. Zecker, we did just discuss that Ms. Ramsay subsequently sought reconsideration and she submitted an additional report from Dr. Robert Smith in support of that request.
Since the time you prepared your reports, have you subsequently reviewed Dr. Smith's report?
A. I have subsequently, yes.
Q. Has anything in that report changed your opinions with respect to Ms. Ramsay's request for testing accommodations?
A. No.
Q. And have you also reviewed the school -- the additional report cards and standardized test scores that have been discussed in the hearing the last two days and were produced in discovery in this litigation?
A. Yes, I have.
Q. And have your opinions expressed in your prior reports changed in any way in light of this new information?
A. No.

Q. Dr. Zecker, we're just going to briefly discuss your credentials. And if you'd like, you may turn back to Exhibit 5A, which is your CV.

A. Uh-huh.

Q. Could you just briefly explain your educational background?

A. Yes. I have a bachelor's degree in psychology and sociology from the University of Michigan and a master's and PhD in psychology from Wayne State University.

Q. And where do you currently work?

A. At Northwestern University.

Q. And what is your position there?

A. I am professor in communication sciences and disorders.

Q. And how long have you held this position?

A. 35 years.

Q. Do you have any particular specialties?

A. My specialties are learning disabilities and ADHD.

Q. And in your role at Northwestern, do you teach classes?

A. I do teach multiple classes, yes.

Q. If we can turn to page 12 of Exhibit 5A. And that's 12 in the lower right-hand corner.

A. Yes.

Q. Is this a listing here on page 12 of courses that you have taught?

A. Yes.

Q. Have you taught courses specifically relating to learning disabilities?
A. I have.
Q. So I'm looking down here.
A. I am currently, in fact.
Q. So it looks like you've been teaching a learning disabilities class for the past ten years?
A. Correct.
Q. And another one, it looks like attention deficit disorder and related behavior disorders.

How long have you been teaching this class? It might require --

A. 20 -- 25-plus years.
Q. And do you perform any research in the area of learning disabilities or ADHD?
A. In both areas I do, yes, uh-huh.
Q. If we could also turn to page 7 in your CV.
A. Uh-huh.
Q. It looks like this list, invited presentations, can you just very briefly describe the types of groups that you give presentations to and on what topics?
A. I give presentations to a variety of groups, to parent groups, to school districts, to -- at professional conferences, primarily those.
Q. And do you also have a clinical practice, Dr. Zecker?

A. Correct.
Q. Are you a licensed psychologist?
A. Yes, I am.
Q. How long have you been seeing patients or clients -- do you use patients or clients?
A. Oh, since the -- since around 1990.
Q. Do you perform diagnostic evaluations of individuals for learning disabilities and ADHD as part of this practice?
A. I do. That's my primary focus, yes.
Q. And then do I understand that you also supervise the clinic at Northwestern?
A. Correct.
Q. And what clinic is that?
A. It's currently called the speech language and learning clinic. For many years it was called the learning disabilities clinic.
Q. And are you supervising diagnostic evaluations at this clinic?
A. I am a consultant at this point with that. I supervised the clinic for about 20 years or so.
Q. And so who are you supervising?
A. Primarily graduate students who are working on their masters degrees and who plan to work in the field of learning disabilities.
Q. And what are you supervising them on?

A. We would have a weekly diagnostic evaluation that would cover two days. And they would learn the various techniques involved in proper evaluation and diagnosis of learning disabilities.

Q. And if we could also turn to page 11 in your CV. We're still in Exhibit 5A.

A. Uh-huh.

Q. Down at the bottom you list some professional memberships. And it carries over to page 12. But I wanted to ask about just a couple of these -- a few of these organizations.

What is the Learning Disabilities Association of America?

A. That is a group of professionals, largely professionals, who have a shared interest in the field of learning disabilities and meet for an annual meeting to discuss current topics in the field.

Q. And are you a member of this group?

A. Yes.

Q. And you're also a member of the International Dyslexia Association?

A. I am.

Q. And what is this group?

A. That is a worldwide group that does essentially the same thing, gets together on an annual basis and presents results of research and talks about current trends in the field.

Q. And then Children and Adults With Attention Deficit

Disorder.

What is this group?

A. That is a group that was initially started by parents and is both a parent and professional organization that provides parents with opportunities to learn about ADHD and allows professionals in the field to interact with each other and discuss contemporary issues.

MS. MEW: Your Honor, the defendants offer Dr. Zecker as an expert witness in the evaluation and diagnosis of individuals with learning disabilities and ADHD, as well as the review of accommodation requests on standardized tests.

THE COURT: Very well.

Counsel, any questions as to qualifications?

MR. BERGER: No. I think that there are particular areas that we may question, but -- as we said with Professor Lovett.

THE COURT: Very well. It goes to the weight of the consideration of the expertise.

We find this witness to be an expert in those fields.

MS. MEW: Thank you, Your Honor.

DIRECT EXAMINATION

BY MS. MEW:

Q. With my apologies for switching notebooks, if you could get the plaintiff's white notebook exhibits back, please.

MR. BURGOYNE: Can I do this, Your Honor?

THE COURT: Yes, Counsel.

MR. BURGOYNE: Which one do you want?

MS. MEW: 33, please.

BY MS. MEW:

Q. Dr. Zecker, are you now looking at Plaintiff's Exhibit 33?

A. Yes.

Q. Do you recognize this document?

A. Yes. This is an article that I wrote for a journal in I believe 1999 or 2000.

Q. And what is the title of this article?

A. "Underachievement and Learning Disabilities in Children who are Gifted."

Q. If you turn to page 2 of this article, sort of midway through this page, you give an example of a boy who you named Lucas with an IQ at the 99th percentile and then reading decoding skills at an average range in the 50th percentile.

Do you see where I am?

A. Yes.

Q. Here you state that: Despite the fact that Lucas is decoding at a grade appropriate level, by virtually any definition of a learning disability, he's underachieving and he would be considered learning disabled.

What theory are you applying there in this conclusion?

A. Yes. That was based on the discrepancy model, which was discussed earlier today, which, at the time that this was

written, was still the prevailing model being used in Illinois, where most of the consumers of this information would have been.

Q. And do you go on to state that: Even if Lucas was performing, if his decoding score was in the 75th percentile, he would still qualify for -- as being learning disabled.

And that, again, is that also under the discrepancy analysis?

A. Correct. And was applicable to school-aged children.

Q. And I know that Dr. Lovett covered this, we don't need to go through it again, but in your professional opinion, is the discrepancy theory now applicable in diagnosing learning disabilities?

A. Correct.

Q. I'm sorry, is it still applicable or not applicable?

A. Oh, no, I'm sorry. It's not applicable anymore, yes.

Q. And even if you were to accept this example that someone had the discrepancy between IQ and achievement, where the IQ is at the 99th percentile and achievement is at the 50th percentile, would this individual be substantially limited in the major life activity of reading?

A. No.

Q. How did NBME reach out to you to review Ms. Ramsay's first request for testing accommodations?

A. In the same manner that Professor Lovett described

earlier. I received an email and accessed the secure website where the documentation that Ms. Ramsay had submitted was contained.

Q. Did you have any communication with NBME between the time you received this file and the time that you submitted your letter report?

A. No.

Q. And then how did -- after you submitted that letter report, did NBME contact you in any way and ask you to make any changes or revisions to your report?

A. No.

Q. And then how did NBME reach out to you to ask you to review Ms. Ramsay's June 2018 request for accommodations?

A. In an identical manner.

Q. Did you have any communications with NBME between the time that they reached out to you and the time you submitted your second letter report?

A. No.

Q. And did NBME reach out to you after receiving that second report and ask you to make any changes or revisions to your recommendations?

A. No.

Q. We're going to primarily stand on the written reports in the interest of time.

So can you just very briefly state what conclusions you

reached regarding Ms. Ramsay's request for testing accommodations on the USMLE?

A. I -- in both instances or --

Q. Yes.

A. Okay, yeah. It's essentially the same in both. I had reviewed all of the materials and did not believe that they demonstrated that she had a substantial limitation in either attention or reading and did not believe that accommodations -- an extended time accommodation was warranted.

Q. And again, we mentioned or you mentioned that you've since reviewed Dr. Smith's report, you've reviewed the additional school records and standardized testing scores that have been discussed in this hearing.

Does that remain your opinion today?

A. I have reviewed those, yes.

Q. And does it remain your opinion that Ms. Ramsay is not substantially limited in a major life activity relative to --

A. My opinion has not changed from that, no.

MS. MEW: I don't have any further questions.

THE COURT: Cross-examination.

CROSS-EXAMINATION

BY MR. BERGER:

Q. Professor Zecker, in your clinical practice, do you see primarily children or primarily adults or both?

A. Primarily school-aged kids, starting at around age 7 up

through young adults. An occasional older adult, but it's unusual.

Q. Would you look at Exhibit 5 again. That is your declaration. And I'm referring to the declaration itself now, so not one of the tabs.

Do you have that volume there, or do I need to help you?

A. I don't think I do.

MR. BURGOYNE: Which one are you asking about?

MR. BERGER: Exhibit 5, D-5.

THE WITNESS: I am there.

BY MR. BERGER:

Q. Okay. Just one more question before we get to that.

I think you said in your answer just now that you generally saw children starting with age 7?

A. 6 or 7, yeah.

Q. 6 or 7.

Why don't you see children younger than that?

A. The diagnosis of learning disabilities and ADHD is notoriously unreliable at those ages. Good instruments to assess and diagnose are not prevalent.

Q. In your declaration, I want to refer you to paragraph 3. And you can read the whole paragraph to yourself if you want, but the part that I want to read is actually just the last sentence of paragraph 3, which begins on page 2. And let me just read that into the record.

As part of my work I frequently meet with young adults who have diagnoses of learning and attention problems to assess both their self-reported symptoms and their objective performance on various tests of cognitive, academic and behavioral functioning.

Do you see that sentence?

A. Yes.

Q. Who wrote that sentence?

A. As I recall, I did. Well, it was edited to some degree, but I provided most of this.

Q. All right. Would you now look at Exhibit 6, which is Professor Lovett's declaration.

A. Yes.

Q. And also paragraph 3. And the last sentence of Professor Lovett's paragraph 3 reads: As part of my work, I frequently meet with young adults who have diagnoses of learning and attention problems, and I assess both their self-reported symptoms and their objective performance on various tests of cognitive, academic and behavioral functioning.

A. Yes, I see that.

Q. Okay. I think the two sentences that I just read to you are word for word the same.

A. They appear to be.

Q. So I'll ask again, who wrote the sentence as it appears in your declaration?

A. I wrote parts of it. I don't recall exactly that sentence, but I certainly reviewed it all and agreed with it all.

Q. You have testified that you have been a reviewer for NBME for some time. I don't remember exactly how many years you said.

A. 16 or so.

Q. 16 years. And I guess you heard Professor Lovett testify about the annual meetings that he attends?

A. Yes.

Q. And do you also attend those meetings?

A. Most of them, yeah. I have missed several, but most of them.

Q. All right. You said that you had reviewed Dr. Smith's -- let me start the question again.

As I understand it, you were not asked by NBME to do a written review of Dr. Smith's report but that you had read it at some point?

A. Yes. I saw it fairly recently, yes.

Q. Okay. And do you understand Dr. Smith to be a clinical psychologist engaged in private practice?

A. Yes.

Q. Do you think that people like Dr. Smith who are -- whose main activity is clinical practice are inherently biased in favor of the people that they evaluate?

A. I can't speak for Dr. Smith in that regard.
Q. In general.
A. There has been some research to show that practitioners are biased in some regards, yes.
Q. So when you're doing your work as a reviewer for NBME, if you receive a report from a private practitioner evaluating the student, you assume that the practitioner is biased in favor of the student. Right?
A. No.
Q. Okay. What do you assume?
A. I assume that the person who was conducting the evaluation was doing so in a straightforward and unbiased manner.
Q. From your review of Dr. Smith's report, is there any reason why you question that in this case?
A. Question bias?
Q. Question in this case whether he was performing his work in an unbiased and professional manner.
A. I don't have any question about that, no.
Q. Is there a consensus about the discrepancy model currently, or is it still a matter of discussion?
A. It has largely fallen into disfavor. It varies from state to state, and even from school district to school district, but it is not commonly used anymore.
Q. What about -- I'm sorry.
A. There's been a substantial amount of research that has

discredited the validity of it.
Q. Just for the record, because I'm not trying to be cute or tricky about this, is Illinois the only state in which you are licensed as a psychologist?
A. Yes.
Q. Have you ever been licensed in another state?
A. No.
Q. So you're not licensed in Texas?
A. I am not.
Q. Or in Michigan?
A. Correct.
Q. All right. Do you know whether the discrepancy model is -- well, I'm sorry. Strike that.
Are you familiar with a manual that is known as the ICD or International Classification of Diseases?
A. I am.
Q. And do you know what the current edition of ICD is?
A. 10.
Q. And is ICD-10 also a widely used manual for diagnosing, among other things, not just this, but among other things, learning disorders and conditions like ADHD?
A. Yes. It is -- as the name says, it's the international classification. And as a result, it is more commonly used in other countries than in the United States, but, yes, it is used.

Q. Are you a reviewer for the MCAT?
A. Yes.
Q. And how long have you been a reviewer for the MCAT?
A. About ten years. I'm not sure exactly, I'd have to look it up.
Q. Let me ask you to look at -- we're going back now to Exhibit 5, which is your declaration, and Tab B, which I think you have identified as the report.
A. Is that this one?
Q. Exhibit DX-5 and Tab B, which is the report that you did for NBME in January of 2017.
A. Oh, DX-5. Correct. Yes, I have it.
Q. And on the second page of Tab B, the paragraph that starts about in the middle of the page, you comment twice about -- well, you're generally commenting about Ms. Ramsay's personal statement here.

What's the personal statement in the USMLE accommodations application? What role does that play?
A. It is weighed along with everything else as a factor in the decision.
Q. That's something that NBME asks students to provide. Correct?
A. Yes. All students provide one.
Q. And you comment in the paragraph to which I just referred in the first line that Ms. Ramsay's personal statement was

lengthy?
A. Yes.
Q. And then about in the middle of the paragraph, you describe it as her well-written, nine page long personal statement?
A. Yes.
Q. Can a student with ADHD write something that is lengthy?
A. Sure.
Q. Can a student with ADHD write something which is well written?
A. Yes.
Q. Do you know how long it took Ms. Ramsay to write her personal statement?
A. I have heard that discussed over the last two days. I did not know that at this time.
Q. I don't recall the exact amount, but it was an extended effort?
A. Yes. I think she said a month or so, yes.
Q. Is that different from or the same as taking a test like the USMLE?
A. I'm sorry, is writing a personal statement --
Q. Yes.
A. -- the same as taking a test? No.
Q. And how is it different?
A. Well, one has as much time as they need to do it, can go

back and edit, revise, rewrite, ask for assistance from other individuals on it, all things that are not possible on a standardized test.

Q. In the same paragraph, you refer to the fact that Ms. Ramsay was in a gifted program through fifth grade?

A. Uh-huh, yes.

Q. Do you recall or do you know what subject the gifted program was in?

A. In math.

Q. Okay. Could somebody with dyslexia succeed in a gifted program in math?

A. Yes. As Dr. Lovett was referring to earlier, that most people have patterns of strengths and weaknesses, and one can be very strong in one area and weaker in another, yes.

Q. So the fact that Ms. Ramsay is gifted in math doesn't indicate that she doesn't have dyslexia?

A. It in and of itself doesn't preclude that, no.

Q. All right. You wrote in the same paragraph -- well, let me just read a couple of sentences and ask you about them.

You wrote, and this is about in the middle of the paragraph: Ms. Ramsay indicates that writing is "pure agony" for her and she experiences "panic and despair" and "awareness of the impending doom" while working on tests. Such descriptions, in my professional opinion, are highly suggestive of a significant effective component to her described

struggles, although as I will indicate, this has never been explored in any evaluation.

All right. Did you ever evaluate Ms. Ramsay personally?

A. No.

Q. And are you aware that Dr. Smith did evaluate her in person?

A. Yes.

Q. Let's go to Tab C now, which is the second review that you did.

A. Yes.

Q. If you look at the second page -- actually, it starts on the first page and continues over, but you're listing a number of things that were submitted as part of Ms. Ramsay's application. Correct?

A. Yes.

Q. And am I right in understanding this was a whole new application that she submitted?

A. Yes. That also contained some of -- the documentation that was submitted earlier, yes.

Q. So she submitted the first application and that was turned down. Right?

A. Yes.

Q. And now she in -- at this time has submitted a brand new application.

And one of the things you list around the middle of the

carryover paragraph on page 2 is a letter from Dr. Ruekberg?
A. Which point number is that?
Q. It is page -- 2nd of Tab C.
A. No, no, no, I'm looking at that, but each of these documents is numbered here.
Q. Yeah.
A. I was just asking you which number it was.
Q. Yeah. The page numbers at the top are a different thing. So about in the middle.
A. Oh, yes. Okay.
Q. Okay. Do you remember reviewing Dr. Ruekberg's letter?
A. I'm sure I did. I don't specifically remember it.
Q. Okay. Do you remember if Dr. Ruekberg said anything about whether Ms. Ramsay's difficulties were the result of, as you called it, an effective disorder as opposed to dyslexia and ADHD?
A. I do not recall.
Q. Okay. Do you know whether Dr. Ruekberg had met with Ms. Ramsay in person?
A. I would assume he did. And I have heard today that he did.
Q. Still on Tab C, your second review report, you comment near the bottom of the page about Ms. Ramsay's MCAT score report.
A. Yes.

Q. Is the MCAT an appropriate diagnostic instrument for dyslexia?
A. No.
Q. Have you ever administered the MCAT to somebody who you were evaluating?
A. No.
Q. If I asked you the same questions about the ACT exam, would you give the same answers?
A. Yes.
Q. All right. You said that you had reviewed Dr. Smith's report. And since I think you were in the courtroom when Professor Lovett testified, you might recall that I reviewed with Professor Lovett several of the tests that Dr. Smith performed.
A. Correct.
Q. And in general, from your review of Dr. Smith's report, do you have any reason to question that he actually administered the tests that he said that he administered?
A. No.
Q. Or got the results that he reported?
A. I'm sorry?
Q. Or got the results that he reported in his report?
A. Oh, no. No, I do not.
Q. Okay. Would you agree with Professor Lovett that one of those tests, the WIAT-information, is an appropriate test to

administer when a diagnosis of dyslexia is being considered?
A. Sure. It is among the measures that are appropriate, yes.
Q. And also that the GORT-5 is an appropriate test to administer in such a case?
A. Yes. With the caveat there that the norms were not completely appropriate given the age, but yes.
Q. And the Woodcock-Johnson IV reading rate cluster, is that an appropriate test to administer?
A. Yes.
Q. And the Nelson-Denny reading test, is that an appropriate test to administer?
A. Well, as Dr. Lovett pointed out, it is not -- the Nelson-Denny is not considered a good diagnostic measure due to its technical weaknesses, but as a screening measure, yes.
Q. I also asked Professor Lovett about a test called the IVA+Plus.

Are you familiar with that test?
A. I am.
Q. And you know from your review of Dr. Smith's report that he administered that test. Correct?
A. Twice as I recall, yes.
Q. Why did he administer it twice?
A. He indicated he was looking for consistency of results.
Q. And do you agree that that's an appropriate test to administer in a case where an ADHD diagnosis is being

considered?
A. Yes. It can supplement the other information obtained, yes.
Q. And you don't have any reason to doubt that he actually did administer that test or that he got the results that he described?
A. Correct.
Q. I also asked Professor Lovett about whether these are tests, the WIAT and the Woodcock-Johnson and the GORT, that somebody can study for before they're administered.
A. No, I do not believe it is. Those are measures of acquired knowledge, acquired skills, and as such really can't be studied for.
Q. And they're different in that way from the MCAT. Correct?
A. Yes.
Q. When NBME sends you a case to review, do they set any kind of time limit on the review?
A. Yes.
Q. Do you recall what that was in the case of your first review of Ms. Ramsay?
A. I believe ten days.
Q. Is that typical in your experience?
A. Yes.
Q. And was it similar for the second review?
A. Yes.

Q. Your first review, which is Tab B, I think, in Exhibit 5, is dated January 13, 2017.
A. Yes, it is.
Q. All right. Am I right that you did not -- at least not at that time, see whatever letter NBME sent to Ms. Ramsay?
A. Correct, I did not.
Q. If I refer to that as a decision letter, do you --
A. Yes.
Q. Do you know when the decision letter was sent?
A. Offhand, no, I do not.
Q. Okay. And looking at Tab C, your review letter is dated July the 19th, 2018; is that correct?
A. Correct.
Q. And do you know when in that case NBME sent the decision letter to Ms. Ramsay?
A. I do not.
Q. If a young child is thought to be underachieving for whatever reason, would you still say that parents of such a child should consider looking for help for that child even if some people think the discrepancy model is no longer any good?
A. Certainly individuals who have a discrepancy as we were discussing earlier can be assisted by appropriate interventions and so on, sure.
Q. So if there is a discrepancy, that could be an indication that the person has a learning disability?

A. Not under -- well, it would depend on the level at which they were functioning, but it could be the case.
Q. I'm not asking at this point whether that's a diagnostic standard. I'm just saying is that something that would lead you to -- if you were speaking to a parent and the parent told you my son is really, really smart but he can't read very quickly, a very, very slow reader, would that be a reason that you would suggest the parent get the child evaluated?
A. Yes.
Q. All right. If that same child got informal help that allowed him to function in school without an evaluation, would you say that means he doesn't have a disability?
A. It depends on what you mean by informal help, I think.
If a child is able to function at an appropriate level, then I would say they're not disabled, yes.
Q. Well, some of the help that was described by Ms. Ramsay in her testimony was the teacher giving her an alphabet chart, the teacher reading things to her, other people reading things to her. If Ms. Ramsay had dyslexia and if Ms. Ramsay nevertheless had a high level of intelligence, is that kind of help something that would help her to do well in school?
A. In some aspects. In the area -- for example, she received very good grades in reading. And having someone read to her would not lead to a grade of A in reading, I would presume. That it's based on her own reading that would lead to that

grade.
Q. Do you know whether any of the grades for reading at that level were for timed reading tests?
A. I do not know.
MR. BERGER: Your Honor, may I have a moment to consult?
THE COURT: Yes, Counsel. As a matter of fact, you can have a break. We'll be in recess for 15 minutes.
(Recess at 3:04 p.m. until 3:18 p.m.)
THE COURT: Are we ready to proceed?
MR. BERGER: Yes, Your Honor.
THE COURT: Very well.
MR. BERGER: We have no further questions for Professor Zecker.
THE COURT: Excellent. Any redirect?
MS. MEW: No, Your Honor.
THE COURT: And is there any reason why this witness can't be excused?
MR. BERGER: No, Your Honor.
MS. MEW: No.
THE COURT: Very well. This witness is done. And, sir, you can be excused.
THE WITNESS: Thank you.
THE COURT: And that completes your expert witnesses that you needed to call out of order?

MS. MEW: Yes, that is correct. Thank you, Your Honor.

THE COURT: Very well. And now back to the plaintiff's case in chief.

MS. VARGAS: Your Honor, we already consulted with defense, and they have no objection. Would it be all right with the Court if Ms. Ramsay stood in the back? She has been sitting for a long time and is having leg issues.

THE COURT: Sure. There's no requirement that she even be here, you know.

MS. VARGAS: Okay.

THE COURT: This is not a criminal case or anything. She's a plaintiff. I've had cases where the plaintiff missed a day or two, so it's not necessary.

Whatever makes you feel comfortable, ma'am.

MS. RAMSAY: Thank you.

MR. BERGER: Your Honor, plaintiff calls Dr. Robert Smith as our next witness.

THE COURT: Very well. Come forward, sir, watch your step coming around the corner there and also around the corner by the witness box. There's an incline and a decline.

DR. ROBERT SMITH, after having been duly sworn, was examined and testified as follows:

THE COURT REPORTER: Please state your name for the record.

THE WITNESS: Robert Dean Smith.

DIRECT EXAMINATION

BY MR. BERGER:

Q. Dr. Smith, I am going to begin by asking you some questions about the declaration that you submitted in this case and the various exhibits to that. So let me make sure that you have the right document in front of you.

MR. BERGER: May I approach, Your Honor?

THE COURT: Yes.

BY MR. BERGER:

Q. Dr. Smith, do you have plaintiff's exhibit binder in front of you? And I have turned to Tab 21.

Would you look at Exhibit P-21 and tell me if you recognize that as being the declaration that you submitted in this case?

A. Yes, it is.

Q. And that is your signature on page 10. Correct?

A. Yes.

Q. And if you turn past that, you come to Exhibit A, which is your curriculum vitae; is that correct?

A. Yes.

Q. Can you briefly describe for the court your educational history.

A. I have a bachelor's degree in psychology from Central Michigan University, a master of arts in clinical psychology

from Central Michigan University and a PhD in counseling psychology from Michigan State University.

Q. Did you also complete a post-doctoral program at Fielding University?

A. Yes. At the time was called Fielding Institute. It's now called Fielding University. It's a two-year post-doc in neuropsychology.

Q. And can you briefly describe your work history after you completed the post doctoral program in 1999?

A. At that time I was in private practice and a part of the time at that time, about a third of the time as a consultant for the Michigan Dyslexia Institute.

Q. Are you licensed as a psychologist?

A. Yes.

Q. In what state are you licensed in?

A. Michigan.

Q. And how long have you been licensed?

A. Since 1986.

Q. Are you a member of any professional associations that relate to your work as a psychologist?

A. The American Psychological Association and the National Academy of Neuropsychology.

Q. What are the membership requirements for the National Academy of Neuropsychology?

A. To be a full member, you have to complete what's a

recognized -- a program that follows policies that they have in terms of what they recognize as the appropriate training regimen. Then you have to be recommended by somebody who is a member, who knows your work.

Q. You have already heard testimony since you've been in the courtroom about something called the Diagnostic and Statistical Manual of Mental Disorders?

A. Yes.

Q. Are you familiar with that?

A. Yes.

Q. And are you familiar with the current edition of DSM?

A. 5.

Q. DSM-5?

A. Yes.

Q. Are you also familiar with something called the International Classification of Diseases?

A. Yes.

Q. And what is the current edition of the ICD?

A. That's 10, Clinical Modification.

Q. And am I right that the ICD-10 Clinical Modification is a version that is specifically designed for use in the United States?

A. Yes.

Q. Are you familiar with a condition that is known as dyslexia?

A. Yes.
Q. What is dyslexia?
A. Dyslexia is a physiological and neurological disorder that interferes with acquiring and applying basic reading skills.
Q. What is it like for a dyslexic person to try to read or understand a written text?
A. They have difficulty recognizing the words, regardless of what the meaning of the word is, just identify correctly what the word is. And it takes a lot of mental energy, even after remediation, to correctly identify those words. A lot of their mental effort has to go into that. And that, of course, does interfere with reading comprehension, although reading comprehension may frequently function in the average range.
Q. How do you go about assessing a person for dyslexia?
A. Well, primarily it's through -- dyslexia is primarily defined as an impairment of acquiring basic reading skills, which is -- and developing what's called automaticity or oral fluency. And you administer tests that primarily measure those skills. You also administer reading comprehension, but the disorder is defined by the difficulty of acquiring the basic reading skills.
Q. Are you familiar also with a condition that is known as attention-deficit/hyperactivity disorder or ADHD?
A. Yes.
Q. And what is ADHD?

A. Well, ADHD, there are several presentations. But ADHD is difficulty focusing attention, being excessively distracted, disorganized, misunderstanding directions. There are some other criteria which I don't recall off the top of my head.

Then the other category, which are hyperactivity, impulsivity symptoms. Primarily hyperactivity symptoms. There are three impulsive symptoms. Basically difficulty, for an adult, sitting still or feeling restless even when they do sit still; talking too much, interrupting other people, difficulty waiting in line, abnormal impatience, that kind of thing.

Q. And how do you assess a person for ADHD?

A. You acquire through interview, questionnaires, rating scales, a description of their current functioning. And in particular, you're looking for signs of theses symptoms and how frequent they are and whether those symptoms also appeared when they were before the age of 12. It doesn't require the -- that for them to -- it's difficult to establish the range of symptoms that occurred before the age of 12, because recall is often not entirely accurate. So it only requires that some of the symptoms were present then. And it causes significant interference in functioning.

Q. Is it common or uncommon for somebody with dyslexia to also have ADHD?

A. It's very common.

Q. And by the way, can you -- over the course of your career,

can you estimate how many assessments you've done in which you've evaluated a person for dyslexia or for ADHD or both?

A. Together, about 1,300, since around 1995.

Q. Based on your experience with doing that, with evaluating people with both or one or the other, how is somebody affected if he has or she has both of these conditions?

A. Well, they feed on each other. They make each one worse. Can't distinguish -- reliably it's a matter of opinion about how much of the problem is due to the attention deficit and how much is due to the dyslexia, because they overlap a lot and they just make each other worse, exacerbate the problems in each condition.

Q. As you know, the case that brings us to court today is a case about testing accommodations for a test, for the USMLE.

In any of the assessments that you've done, have you ever made a recommendation about whether an individual had a disability that affected her ability to take a timed test like the USMLE?

A. Yes. That's the most common problem for somebody who has either dyslexia or attention deficit disorder. That's the most standard, common accommodation.

Some people with dyslexia read so poorly that they also have to have things read to them. Particularly the extended time is primarily applying to people who have developed compensatory strategies, either on their own or through formal

kinds of instruction, to strength their reading skills.

MR. BERGER: Your Honor, we would like to offer Dr. Smith as an expert witness on the assessment of individuals with ADHD and dyslexia and how those conditions affect their ability to take timed tests.

THE COURT: Very well. Any questions as to qualifications?

MR. BURGOYNE: No objection, Your Honor.

THE COURT: Very well. We so find.

DIRECT EXAMINATION

BY MR. BERGER:

Q. When someone comes to you for an assessment, what do you do?

A. I do the interview. Well, we have some questionnaires that we send out to them and ask for them to fill them in before they come in. And that helps guide me in the interview to ask additional information from what they respond there.

They try to, first of all, size up how likely is it that they have that condition and should we go forward and do testing. It's not uncommon where I've -- basically, we've stopped at the end of the interview because I've concluded or recommended to them -- I'm generally willing to consider doing the evaluation, but I usually make a recommendation whether testing is really going to be beneficial to them or clarify things based on what I learn from the interview.

And whatever records they may have, I ask them to bring those in, because that helps make -- any past testing that's been done provides information about -- even more information about how likely they are to have the condition, either ADHD or dyslexia.

Q. So does it ever occur after this initial interview that you don't go forward or the individual doesn't go forward with getting the full assessment?

A. Yes.

Q. You, I know, are acquainted with Ms. Ramsay, the plaintiff in this case.

When did you first meet her?

A. Face to face, that would have been on September 25, 2018. I spoke with her on the phone somewhat prior to that.

Q. And what did she tell you about what she was coming to speak to you about?

A. Well, she described to me that she was a medical student and had been denied accommodations. And she'd had other evaluations done. And that she was doing an appeal and that she was looking for somebody who was capable of doing that kind of an evaluation, who was experienced or familiar with it. And I asked her to send me whatever data she had so I could look it over to see what's been done in the past and whether or not there was things that were done in the past that would basically tell me whether or not right off the bat whether she

was likely to have it or not have it.

It's not uncommon for me, when I get a phone call like that -- if I get enough information that tells me that, you know, I don't think this is really going to do for you what you want it to do and it's -- you know, because there's evidence here that shows otherwise, I usually discourage people from going forward with the evaluation.

Q. So in the case -- in Ms. Ramsay's case, what did you tell her at this stage?

A. Well, when I looked it over, nobody had done the kind of testing that you need to do to even check into dyslexia. The only thing that they had done was a couple of brief things and then a couple of reading comprehension tests, which don't really tell you whether somebody has dyslexia or not.

In regards to the attention deficit, I thought some of the work that was done, particularly by Dr. Ruekberg, seemed pretty okay. But the reports, from my experience, didn't try to address more specifically what the DSM-5 requires and what people generally expect to see in one of these reports if you're making that kind of an application.

Q. Okay. When you refer to the report in that last answer, were you referring to Dr. Lewandowski's report?

A. In -- well, yes. That was the one that -- he didn't -- there wasn't much of a write-up. And he didn't -- as far as -- he didn't address specifically the DSM-5 criteria and how she

met it. And in regards to dyslexia or reading, the tests that he administered was inadequate for evaluating that. It was a reading -- no, I'm sorry, it wasn't a reading comprehension. It was a screening test, the WRAT5, I think, which is just a screening. That's not considered an adequate battery for evaluating a learning disability.

Let me add, dyslexia is the most common learning disability, although that is not the title -- the terminology that is typically used. It's mentioned in the DSM-5. But the labeling in the DSM-5 refers to specific learning disorders in either reading, writing or math. And you could have basic reading or a disorder in reading comprehension. They are kind of mutually exclusive -- not mutually exclusive. You can have one or the other. You can have both. You can have both, but you can have one or the other.

Q. And what's the terminology in ICD-10 for dyslexia?

A. I don't recall the specific -- I don't recall the specific language, something along the lines of a -- I don't remember, scholastic learning disorder, something like that.

Q. So --

A. Or academic learning disorder.

Q. -- after having this conversation with Ms. Ramsay, you told her, as I understand it, that you thought there were some additional tests that you could do that hadn't been done before. Right?

A. Yes. That are a part of actually a standard battery that if you're going to do dyslexia, these are the tests that are agreed upon by dyslexia experts you should do. And none of those were done.

Q. When you spoke to her, you didn't know what the results of those tests would be; is that --

A. Oh, no, not at all.

Q. And did you tell her that?

A. Yes.

Q. And what did she decide about whether she wanted to go ahead?

A. Well, she decided to go forward. Now, I did emphasize to her that I didn't know and it might not turn out -- you know, it might not really show that she has dyslexia.

Q. All right. You still should have Exhibit P21 in front of you. And turn, please, to page 15 of the overall document.

And tell me what appears at page 15?

A. Well, her name, date, when the test was done and when the report was completed; a list of the -- what I referred to are sources of information, but that includes --

Q. Okay. Well, I'm ahead of myself. You're ahead of me.

A. Okay.

Q. Just what I just wanted to actually identify -- and I didn't ask it the right way -- pages 15 through 45 of P-21 are your report, are they not?

A. Yes.
Q. And that's your signature on page 45?
A. Yes.
Q. So this is the report that you created after you had met with Ms. Ramsay and done the tests. Right?
A. Yes.
Q. All right. I'm going to ask now just briefly about some of the sections. And the first section, which I think you started to talk about, is sources of information.

So what is that section about?

A. Well, it's just listing that I did an interview with her and her mother and then the tests that I administered.
Q. All right. And then the next section -- oh, by the way, those tests that you describe under sources of information, are those all tests that you administered yourself?
A. Yes, I administered all the tests. I don't have a technician.
Q. All right. The next section which starts on page 15 and continues over is called records reviewed?
A. Yes.
Q. And what's that section about generally?
A. Well, that's about all the documents I asked her to bring in for me, as much as I can get, to look over both -- primarily before the interview and during the interview. The ones that she sent to me, plus anything extra she brought to the

interview that I would then interview as part of the -- I would review as part of the interview.

Q. And there's a section then -- I'm going to skip over the reason for referral, because I think we've already covered that, that Ms. Ramsay came to see you because of her problems with the USMLE.

But the next section, which starts history and interview information. And this is a long section, so I'm not asking you to describe it in detail, but what generally is the purpose of the section and of the interview?

A. To summarize the information that I gathered from her through the questionnaires and interview and even reviewing some of the records about her history of her problems and describe the problems that she's had leading up to the present time.

Q. And this was an in-person interview. Correct?

A. Yes.

Q. Do you remember approximately how long the interview lasted?

A. Yes. Well, these interviews -- I schedule out an hour, and they usually take two before we even consider doing -- that's a lot of stuff to go through. And before we even start doing the testing.

Q. All right. As part of the history and interview information, if you turn to page 18 of Exhibit P-21. And it's

page 4 of your report.

There's a section that starts on that page called school history?

A. Yeah.

Q. And what generally is the purpose of that section?

A. Well, similar to what I just described, except related to her experiences in school, difficulty she's had in school, what she's done to try to address it up to the present time.

Q. What did you find out about whether Ms. Ramsay had formal accommodations while she was in elementary school?

A. I found out that she hadn't had any formal -- she hadn't had any really evaluation and had not had any formal accommodations.

Q. And what did you -- and if I ask the same question about middle school and high school, would it be the same answer?

A. Yes.

Q. Is that unusual for people, adults with dyslexia that hasn't previously been diagnosed?

A. No. I might qualify that. That happens -- in my experience, that happens fairly frequently. I mean, it's not like half the time. If I put a figure -- make up a figure, maybe 10 or 15 percent of the time that people come in with that kind of a history.

Q. On page 8 of the report --

A. Page 8?

Q. Yes. It's page 22 of the total document, but it's page 8 of the report, the section at the top of the page, mental status and observations.
A. Okay, yeah.
Q. What generally is the purpose of that section?
A. You know, I'm still looking for that section, I'm sorry. What page are you talking about?
Q. It should -- well, it should say -- at the top, it should say page 22 of 60. And at the bottom --
A. Oh, never mind. I got it.
Q. Well, and then there's the actual -- so it's page 8 of the report?
A. Sure. I'm there now.
Q. We have too many page numbers in this case. All right. So you've got the page that has mental status and observations at the top?
A. Right.
Q. And what generally is the purpose of that section?
A. It's to describe her general functioning, to review some questions that I would ask her about her sleep and just my observations about how she handled herself. These are screening things that -- these kind of observations are used to screen -- initial screening for whether you have a severe kind of behavioral disorder or something that stands out, a psychological disorder that we might need to look into further.

It's not the end of it, but it's the beginning part of checking into that.

Q. During your interview or all of your testing of Ms. Ramsay, did you observe anything that would affect her ability to respond to your questions or respond to the instruments that you were giving her?

A. No. And I left -- it's not just a description of her psychological functioning. I'm also including in there general statements about what she was like during the interview and how she interacted with me so that I could make some kind of an assessment or comment about how she responded to the tasks I asked her to do.

Q. Okay. Toward the bottom of the same page, there is a section entitled intellectual functioning. And that continues over to page 11 of your report, which is page 25 of the overall document.

What generally was the purpose of that section?

A. Well, number one is to make sure she doesn't have low ability, which her history says that's probably not the case. She's in medical school, so I didn't think she got -- but it's to double check that.

But also, since I'm evaluating for attention deficit disorder and cognitive functioning in general, it's to get a general sense of what is her cognitive functioning like to begin with. And this reflects functioning in four basic

domains that are generally associated with the IQ score, although not necessarily intelligence.

Q. So you're referring, I think, to -- or let me see if I've got this right. You're referring to verbal comprehension? You said for --

A. Yes, I'm referring to verbal comprehension. It's called perceptual reasoning, but most people would think of it as and it used to be called nonverbal reasoning. Working memory, which is actively processing information in your head. And processing speed, which is really an attention-related condition. It's kind of a -- the terminology, it's evolved -- historically that's the terminology that they've used. But the nature of the subtests that are done really tap into difficulties with attention.

Q. Now I'd like to ask you about some of the specific findings that are contained in your report.

And look first, if you would, at page 16 through page 18.

A. Which page --

Q. So it's page 30 of the document, starting with page 30 of the document, 30 through 32.

A. All right.

Q. Now, you refer in these pages and some other places to fluency.

And can you tell me how you're using the word "fluency" in your report?

A. Fluency -- oral reading fluency, which is what we're referring to there, is the speed and accuracy with which a person can read words and oftentimes referred to as automaticity, which is a reflection of how -- the non-dyslexic reader reads effortlessly in doing this. The dyslexic reader, even when they had remediation, substantial remediation, still stumbles and is slow and often makes a lot of mistakes in doing this, as opposed to the non-dyslexic or non-impaired reader who does it without thinking, or not thinking very much.

Q. So as part of the testing you did, were there some measurements of fluency?

A. Several. Both silent and oral.

Q. So on page 18 of the report, there is a summary of scores from the WIAT-information?

A. Yes.

Q. I think it's been referred to before in the hearing, but just for the record, what is WIAT-information an abbreviation for?

A. The Wechsler Individual Achievement Test, Third Edition, most recent edition. Although they're coming out with a new one next year.

Q. All right. And is there information on page 18 of the report, page 32 of the document, about fluency?

A. Yes.

Q. Describe that.

A. Oral reading fluency. She had to read -- she ended up reading three passages. You only use -- the reason for that was the way that the WIAT sets things up is that you start off at a level of difficulty that is expected that a person of her age would be able to read fairly efficiently within a certain time limit.

If they go over that time limit, regardless of the mistakes, you don't score that. You stop that testing, although you're allowed to continue, because I've found it awkward to stop somebody. It's embarrassing for them to be stopped. But you don't score that.

You then revert to -- somewhat easier, the next two easier passages and do that. And the first one that she does, she has to do that within a certain maximum time limit. And if she does that, then you administer the next one in the order. And those are the two that are used for scoring. And you're -- there are two scores, both the speed with which she does it and then the number of errors, although the oral -- this score, the oral reading fluency, is a combination of the speed with which she does it and some of the errors but not all of the errors.

There's another -- am I getting ahead of myself?

Q. No. That's -- I think it's a good thing to explain at this point.

A. I should stop?

Q. No, no, no. Go ahead and explain how the errors are

treated.
A. The nature of the scoring for the WIAT, in terms of scoring errors, you do have another -- there's a subscore. You have a speed score, which is how fast did she do it, and then you have another score considering accuracy. The accuracy score, which is a component score, you count the times that she omitted a word, misread a word and didn't correct it, added a word. Is there another one in there? No, that's it. And that ends up with that score. However, in terms of the errors that are counted to come up with the primary oral reading, the only errors that factor in there are the times that she added a word or misread a word and didn't correct it. If you turn around and correct it, it doesn't count as an error.
Q. So -- and I think that if I have this right, that we're on page 18 of the report. But on page 16, you talk about the oral reading accuracy score being average and at the 55th percentile. Correct?
A. Let me find it again.
Yes, 55th percentile.
Q. Okay. So generally speaking, on this test, subject to the explanation you gave of how this test treats accuracy, generally speaking, she read accurately but slowly?
A. On this test. The Gray Oral is scored differently, so it produces a different score with a different meaning.
Q. Okay. So we'll talk about that too.

But -- and I think you explained generally how this is scored, but on page 18 for oral reading fluency, it says that the standard score was 67?

A. Yes.

Q. And that the percentile rank was 1?

A. 1.

Q. Okay. And I think we all have been talking about percentile for two days, but just to put it in the record here, when you say that a score is in the 1st percentile, what does that mean?

A. That means her performances was only as good or high as 1 percent of other people her age. Now, conversely that means that 99 percent of people her age were better at her than that.

Q. And for the WIAT-information, this is an age-based comparison?

A. Yes.

Q. You're comparing her with other like-aged people?

A. That's correct. This goes up to age 50.

MR. BERGER: Your Honor, at this point I had planned to try to play some of the recordings that Dr. Smith made of Ms. Ramsay's actual performance. And we have yet to master the technical difficulties of playing them, so I'm going to pass over that for now.

THE COURT: That's a good idea.

BY MR. BERGER:

Q. So on this fluency score that we've just been talking about, the oral reading fluency score on the WIAT-information, is that -- is it fair to say that is determined mainly by reading speed?

A. On this test it is. It is much more influenced by speed than the errors that are made, unless you make a whole bunch of errors. She didn't make enough of those -- primarily speed is influenced on that particular score.

Q. And I think one of the things you said is if you make an error and then correct it, then it isn't counted as an error. Right?

A. That's correct.

Q. Okay. All right. Well, then let's talk about the GORT, because you've mentioned that. And the GORT is discussed in your report, I believe starting at page 21 of the report, but page 35 of the document.

A. Yup. Okay.

Q. And that discussion continues on over to the next page too. So on the GORT, according to your report, Ms. Ramsay had an accuracy score that was at the 5th percentile.

A. Right.

Q. And a rate score that was at -- well, and then it goes on to say the fluency score. The fluency score, that was at the 2nd percentile. That's over on the next page.

A. Uh-huh.

Q. And you say in your report, she was able to correctly read most of the words but her reading was slow.
A. Where is that at here?
Q. That's on page 22 of the report, third line.
A. All right. Let me look at that.
22, the third line?
Read most of the words but her reading was slow.
Yes. That's reflecting -- the way that the Gray Oral was scored, she made a lot of corrections. She would read a word wrong and then would correct it. Unlike the WIAT, those are not counted as errors on the WIAT. Those are counted as errors on the GORT, because it reflects stumbling and awkwardness and misreading something at first and then having to go back and correct it.
Q. And in fact, you went on in this same page to give a description in your report of the manner in which she read?
A. Correct.
Q. Can you just summarize that very briefly?
A. Well, she read in short phrases, two- and four-word phrases, halting, a lot of hesitations, a lot of self-corrections, a lot of rereading of a phrase or a four-word -- a four-word phrase throughout the passages that she was reading. So it reflects a lot of hesitation and uncertainty about what's the correct word.
Q. Okay. Let's just turn back one page to page 21 of the

report. And there's a discussion there at the top of the page and then a table in the middle of the page of results from the Woodcock-Johnson IV?

A. Yes.

Q. And first can you just summarize what you found about reading rate and sentence reading fluency and word reading fluency?

A. Those are -- well, sentence reading fluency is a silent reading task. And what you do is basically you're reading simple sentences, they're not really difficult words to read, and you're marking whether they're true or false, yes or no. Like, for instance, a bird writes books, is that false or true. Well, you know, that's pretty simple. And so -- and then you get three minutes to do as many of those as you can.

Every error you make gets counted against you. It detracts from your score.

The word reading fluency is you have a -- rows of four words. Two of the words are related, like shoe, stone, sock and pencil. Well, shoe and sock would be the ones that are related. And she has to mark those. And then she's allowed to skip -- like in the silent reading, the instructions are skip anything you're not sure about. You can go back for it later if you have time. Most people don't finish the whole task in the three minutes. And the same is the true for the word reading. You can skip anything you're not sure about. Get as

many done as you can as fast as you can.
Q. So we've reviewed so far three different tests that you did, the WIAT-information --
A. Let me also add that those -- you're reading those silently. Unlike the WIAT and the GORT-5 where you're reading out loud, those you're reading silently.
Q. Okay. So anyhow, three different tests, the WIAT and the Woodcock-Johnson and the GORT-5.
And your results for all three of those, for three different tests, and you've described the tests, showed low scores for fluency?
A. Very low scores.
Q. And then there also is a test that you did called the Nelson-Denny?
A. Yes.
Q. And you can see a reference to that on page 30 of the report, which is page 44 of the document.
And what generally did the Nelson-Denny testing tell you about Jessica's performance?
A. Well, let me look at this -- I'm at the wrong -- you said 44 of the doc?
Q. Yes. It's the page with the title recommendations at the top.
A. I'm confused. You're referring to the Nelson-Denny. I'm not -- and that's not in this part, I don't think, is it?

Q. Well, it's discussed as part --
A. Oh, yeah. I see that I referred to the Nelson-Denny.
Q. Correct. There may -- I mean, if you want to look for a different reference to the Nelson-Denny, that's fine, but --
A. I'll do that, because it's -- I go into a little more detail earlier than that.

So what's your question again, please?

Q. Just what -- whether the Nelson-Denny was another piece of evidence about Ms. Ramsay's reading ability.
A. Yes. Mostly I'm focusing on the reading comprehension test, which you get 20 minutes for. Like Dr. Lovett said earlier, I take -- the rate score, I take with a grain of salt. It's not terribly -- it's not terribly reliable the way it's conducted. It's only one minute reading and silently.

But what she did was she answered 95 percent of the questions that she attempted correctly. But I think it was only 40 -- she only attempted 42 percent of the questions that were there before the time ran out.
Q. And that's because she ran out of time?
A. Yes. Most adult -- most -- there was some research done on this that most high school seniors can finish the whole 38 questions in the 20-minute time limit. But that's not part of the scoring. That's just some supplemental testing that was done on high school seniors.
Q. Now, there's evidence in the case about various

standardized tests that Ms. Ramsay took over time, especially the ACT, which is a college admissions test, and the MCAT.

A. Uh-huh.

Q. How would you compare the kinds of tests that we've just been discussing, the WIAT-information, the GORT-5, the Woodcock-Johnson IV and the Nelson-Denny, with a test like the ACT or the MCAT?

A. Those are not diagnostic reading tests. They primarily rely on reading comprehension. And they don't give us any information about what was going on for the person in order to accomplish what they accomplished on it.

Q. You have testified generally and your report refers to the fact that you reviewed early school records --

A. Yes.

Q. -- for Jessica. I think report cards?

A. Yes.

Q. And would you say that there is any indication in those records of a reading problem?

A. No, not much. Actually, none.

Q. Is it common or uncommon for dyslexia to be unrecognized in early school records?

A. Yes. I mean, it's common in my experience. I don't find those kind of school records to be all that accurate of a reflection of what was going on. They typically don't say much. I mean, they give the grades and they make a few

comments, but my impression about most -- over these years about most teachers is that they're -- if the student is managing to accomplish the tasks and get a good grade, no matter how they do it, the teacher wants to be encouraging and positive and they don't want to focus on anything that's negative.

MR. BURGOYNE: Lack of foundation, Your Honor, objection.

THE COURT: Overruled. We'll grant him some expert license.

THE WITNESS: If I could say one more thing about that?

BY MR. BERGER:

Q. Yes.

A. My experience, again, is that I look for those things, because sometimes there's something there that says something. But the absence of something there doesn't -- doesn't tell me that something wasn't going on. That's the basic -- what I'm trying to say.

Q. I want to show you now an exhibit from defendant's exhibit book. So let me help find that for you, but I'm going to be referring to D-27.

Dr. Smith, D27 appears to be a report on a test called the Iowa Test of Basic Skills that Ms. Ramsay took when she was 11 years old.

A. Yes.
Q. Do you see that?
And have you reviewed this before?
A. I don't think that was available to me when I did my evaluation, but I have looked at it subsequently.
Q. And is there any information on this report that relates to the difference between Jessica's performance and her cognitive ability?
A. Yes.
Q. Could you describe that?
A. The Iowa Test is frequently done in combination with a test called the Cognitive Abilities Test, which is a group-administered test trying to measure IQ or intelligence. And it's not as -- considered as precise as the individually administered tests like the Wechsler, but it's commonly done. I remember when I was this age doing it. Or remember looking at these things at that.
And what this does, though, is that for the cog, it gives a -- for the cog ability test, it provides a combination -- I mean, percentile ranks, scores in relation to other children her age, as well as other children in the same grade. And those are mentioned here. They're both far above average.
And what it says, though, is that her -- the measurements of her -- this is a standardized group administered test. What this says is that like her -- a number -- well, I'll just read

what it says here.

That a number of her academic skills are significantly below what they would have expected given her cognitive abilities test. The vocabulary reading comprehension, spelling, capitalization, punctuation, social studies and math computation, they represent areas in which Jessica is not doing as well as she might be expected.

The measures of her intelligence are -- the overall measure for the grade -- they're using the grade -- well, they're both -- they're using the grade score here. That's at the 98th percentile. And her reading score is at the 74th percentile. And although that's a good score compared to other kids, that's far below what you would expect for somebody with that of a cognitive ability.

Q. When Professor Lovett and Professor Zecker testified, there was some discussion about what they called the discrepancy model.

Do you recall that?

A. Yes, yes.

Q. Is the discrepancy model still recognized either in DSM-5 or ICD-10?

A. It's recognized in ICD-10.

Q. And are there also scholars in the field that have advocated for the discrepancy model?

A. Yes. The problem with the discrepancy model is that there

is a lot of controversy about that, a lot of debate among expert researchers about this thing, some for it, some against it. And leading to a lot of criticism about the DSM-5 eliminating it. The problem with the discrepancy model is that with children with learning disabilities frequently didn't exhibit a significant discrepancy. And then they were ruled out from having a learning disability when in fact they were struggling.

But the presence of a discrepancy is a meaningful thing. And that's what these other experts are saying, is that the absence of it, we should eliminate it for that reason and not disqualify somebody if they don't have that discrepancy, because there's an interactive effect that can happen where your learning disability can actually depress the development of your intellectual abilities. But if you happen to have one, that's still meaningful. That's what the criticism is, that that shouldn't have been thrown out for that reason in order to solve the other problem.

That's particularly promoted by Drs. Bennett and Sally Shaywitz at the Yale University Dyslexia Center in their research on the connections and the importance of the IQ and discrepancy.

Q. And in your report, did you consider whether there were discrepancies between Jessica's performance and her cognitive ability?

A. Yes. And let me add to that. It's not enough to have a discrepancy. That can happen just by the nature of the test. The issue then is if you have a discrepancy, it means that, well, it didn't happen just because of the sloppiness of the test, but you also have to look how frequently does that occur in the general population for it to be clinically meaningful. It needs to be unusual. And generally the cut for that is generally anything 15 percent or less is considered unusual, therefore, abnormal.

Q. And did you consider that in your report?

A. Yes, absolutely.

Q. Is page 11 the right reference in your report? That's page 25 of the overall document, page 11 of your report.

And I can help you find it if that --

A. As long as I don't knock things over here.

What page?

Q. It's page 11 of the report.

A. That should be at the end of the academic discussion.

Q. Yep.

A. That's usually where I -- no. That would be at the end of the WIAT, because that's really the only one I use for that. That's the only one -- they did studies on -- they did develop -- I call it the WIAT. The WIAT, the WIAT.

Where they -- in the standardization sample, they do like 5,000 kids and adults to measure how frequently these kind of

discrepancies occur in the population sample. And that's where those figures come from. And it's a big enough sample that we can make a generalization that that probably reflects what occurs out there with the whole population in general.

Q. Okay.

A. You want me to find that? Is that what you're looking for here?

Q. I don't think we need --

A. I'm there now, so if you want me to refer to it.

Q. No.

A. I did it in two ways. Because there's a -- I used the IQ, even though I don't think that's a valid measure of her intelligence. And I use it with the General Ability Index, which is a preferred measure among the -- many of the organizations that deal with gifted, because -- especially the gifted learning disabled, because they often do have these discrepancies in some of these other domains, like processing speed and working memory index.

And those are also -- these discrepancies, that's also important, because base rate, how frequently does that occur with people at that level? So, again, it has to be unusual, lower than 15 percent. So it's not like it just occurs all the time for people. It's not occurring very often, therefore, it's unusual and, therefore, abnormal.

And so that's where the General Ability Index doesn't use

those. The working memory index and the processing speed index are actually attention-related components. And so when you factor those out, the verbal comprehension and the perceptual reasoning are solving problems, both verbally and nonverbally, which is what most people would think of as intelligence to begin with. And it would represent your optimal -- well, a better estimate of your intelligence when you're able to use all of your compensatory strategies that you may have.

Q. And what's the reason why, in Ms. Ramsay's case, the General Ability Index is a better measure than IQ?

A. Well, because her -- the unusual discrepancies between her verbal comprehension index and her performance reasoning index and her -- in particular, the processing speed index. That -- I could -- I need to go back to the IQ or the Wechsler intelligence scale to comment on it.

Do you want me to do that?

Q. Yes.

A. How frequently that was? I mean, that's important. It's not enough to have a discrepancy. I said that.

Q. I think page 9 of your report, if I'm looking at the right thing.

A. Thank you. Page 9.

The -- and we're comparing her against other -- in this instance, against other people who have an IQ of 117.

And I did some comparisons. I'm -- I didn't include it in

the report. We're making kind of an arbitrary decision about which group are we going to calculate these things.

If I calculated it based on how frequently do these kind of discrepancies occur with people with an even higher IQ, which would be where people typically think of gifted, with an IQ score, they occur even less frequently. But it's pretty infrequently here.

This is -- the difference between her performance reasoning index and processing speed occurred in only 1.3 percent of the population of people at that level. That's pretty uncommon.

Q. What page are you?

A. I'm on page 24 of 60 of the exhibit.

Q. Okay.

A. Or 10 of 31 of my report.

Q. Okay. I want to change the subject now and talk about the diagnosis of ADHD --

A. Okay.

Q. -- in Jessica's case, in Ms. Ramsay's case.

What generally did you base the diagnosis on in her case?

A. The descriptions that she and her mother and her fiancé Neil gave and their responses to the rating scales that I asked them to fill out, which I asked him -- her mother -- pretty sure -- yes, I did. I asked her mother to fill out that rating scale, about how Jessica was when she was under the age of 12,

during her elementary school years. And that's primarily how you conclude about an attention deficit.

There are no -- you want me to get into this?

Q. Well, let me just ask this: Was there a specific test that you did with respect to ADHD?

A. Yes.

Q. And what test was that?

A. That was the IVA, the Integrated Visual and Auditory Attention -- Continuous Performance Test.

Q. And what were the findings from it?

A. She was extremely low, both administrations.

Q. Well, for example, in your report on -- in your report, you begin the discussion of the -- let's just have it in the record at this point, what you're referring to. The full name is the Integrated Visual and Auditory Continuous Performance Test. Correct?

A. Yes.

Q. Sometimes called the IVA or the IVA+Plus?

A. The IVA+Plus is the term.

Q. And that begins at page 11 of the report. And then at page 12 you begin to explain the findings. And you said that you administered it twice?

A. Yes.

Q. And why did you administer it twice?

A. Because the scores were so low, I wanted to see if I would

get a similar result to see how reliable that was.

Trying to factor in some of the test error that are built into some of these kind of tests. So offset it to see if I get it, a similar kind of result or something drastically different.

Q. All right. So on page 13 of the report, around the middle of the page, where you're just describing the first time you administered it -- and actually, there are a number -- let me just review them quickly.

On page 12, you talk about the Full Scale Response Control Quotient?

A. Yeah.

Q. And you say that that was -- got you a score of 44, which was in the extremely impaired range. Correct?

A. Let me just move this before I knock it over.

What page?

Q. Page 12 of the report, and near the bottom.

A. Okay. All right.

Q. There's a global quotient scale score you report on the first time you administered the test of 44?

A. Yes.

Q. And you say that fell in the extremely impaired range?

A. Yes.

Q. And then you also describe her auditory response control quotient scale was 38?

A. Oh, wait a minute. Auditory response.
Q. And the visual response control quotient scale on the next page.
A. That's 38 for the auditory and 65 for the visual.
Q. Okay. And you say they both fell into the -- or all three of those fell into the extremely impaired range?
A. Yes. Well, one is extremely and one is severely. I don't know if they're different. They're both bad.
Q. All right. And on the next page you described something called the Full Scale Attention Quotient?
A. Uh-huh.
Q. Also in the extremely impaired range?
A. Uh-huh. Oh, you're asking the question?
Q. Yeah, yeah.
A. What's the question again?
Q. Just to confirm that you described the Full Scale Attention Quotient as falling in the severely impaired range?
A. Yes.
Q. And the visual attention quotient also in the extremely impaired range?
A. Yes.
Q. And the next paragraph down, you refer to the combined sustained attention scale also in the extremely impaired range and the visual sustained attention quotient scale also in the extremely impaired range?

A. Could I -- well --
Q. And without going through the second administration in as much detail, did those findings generally confirm the findings from the first administration?
A. Yes.
Q. So was this additional evidence that you considered as part of your ADHD diagnosis?
A. Yes. Just as a note, these kind of tests, there are several on the market, they're all patterned after air traffic controllers sitting in front of a screen watching something that's extremely boring and having to keep their attention on it because these are very boring. Most people with attention deficit hate doing this test. It's miserable for them to sit through 15 minutes of this.
Q. Let's look at page 8 of your report. It's page 22 of the big document but page 8 of the report, page 8 of 31.
And I'm going to be discussing this section called -- under the heading symptom validity.
A. Yes.
Q. You describe that you administered a test called a Test of Memory Malingering, or TOMM?
A. Yes.
Q. Why did you administer the TOMM in this case?
A. It's one of the most commonly used tests, it has a lot of research behind it, beyond being experimental.

And I'm assessing for both attention deficit and dyslexia. And it's one of the most frequently used tests that's used.

Q. Besides the TOMM, is there anything else that you relied on in considering whether Ms. Ramsay was making genuine effort during all this testing?

A. Yes. Well, her general demeanor -- well, primarily her general demeanor. And she came across to me as a very sincere person who was trying her best. And the symptom validity test -- actually, they used to be called symptom validity tests, but they're actually referred to as performance validity tests now. It's a supplement to try to see if there's any -- to supplement what my own judgment was about her, her efforts.

Q. But you did also choose to do the TOMM, the Test of Memory Malingering in this case. You didn't rely just on your clinical --

A. No, no. I choose to do this. And this has been -- it's been used in studies with -- to examine people who have reading disabilities in addition to memory or attention deficit. It's been used in a broad range of neuropsychological dysfunction, brain dysfunction, attention deficit, learning disabilities, dyslexia. And so it's been researched in those areas as being effective.

Q. Taking account of everything that we've reviewed this afternoon and everything that you've described in your report, what conclusion did you reach about whether Jessica Ramsay has

dyslexia?

A. I had no question about it.

Q. And would you -- could you briefly summarize your reasons for that conclusion?

A. Well, her performance on the test that actually measured dyslexia, the measures of basic reading, oral reading fluency, silent reading speed, those are the primary tests that reflect whether or not you have dyslexia.

Q. And based on everything that you've described and in your report, what conclusion did you reach about whether she had ADHD?

A. I concluded that she did have ADHD. By the description from her mother and her, it seemed credible to me. The explanation for why it doesn't -- what they did for her when she was a youngster in elementary school seemed credible to me and was -- supported that those symptoms were there.

Q. You're aware and you describe in your report about prior professional evaluations of whether she had ADHD or not.

A. Uh-huh.

Q. By Dr. Smiy?

A. Yes.

Q. And also by Dr. Ruekberg?

A. Yes.

Q. And did you consider their findings in reaching your conclusion about ADHD?

A. Not so much Dr. Smiy. And I don't mean that in a negative way toward him, but a general office practice doesn't go into a lot of detail. They're making the best guess they can with the limited time they have. They're going to treat them. They get to make that decision. And then they're going to see how well they respond. That's typically what happens in a doctor's office.

Dr. Ruekberg, from what I read, did more of what a typical evaluation for attention deficit is, which is the collection of interviews, information and the filling out of rating scales that pertain to the symptoms of attention deficit.

Actually, that is what is primarily -- I mean, you collect as much history as you can. I use these -- like the IVA tests, I use that. And I look at patterns of the Wechsler to see if that's consistent. There are other conditions that can produce that pattern, so that's not a -- they're not specific to that.

But no professional organizations have approved any neuropsychological tests as a primary determinant of attention deficit, either for or against having it. And they have to basically collect what information you can about their history, the frequency of their symptoms that you gather from them and other people who know them, and you make your best professional judgment. It's a lot less -- it's primarily not test driven.

So for instance, if she had scored well on the IVA, that wouldn't matter, because those kind of tests in general have

been found to have a very high false negative rate. I mean, they've failed to detect it, roughly speaking, about 50 percent of the time when in fact it's there. If they happen to find something, they're right about 90 percent of the time. That doesn't mean that they have attention deficit. It means they have impaired attention, which could be from psychosis, depression, brain damage, a whole host of many things, having the flu, taking medicine. But then based on the history, you could make an inference about, well, what could that be about, why did they perform in the impaired range.

Q. And Ms. Ramsay didn't have any of those --

A. No, she did not have anything going on. And she didn't take any medication because what good would it do to do a test of attention if she's getting the treatment for it?

Q. Based on your testing, everything in your report, everything you've described this afternoon, is it your opinion that Ms. Ramsay needs testing accommodations for timed written tests like the USMLE?

A. Yes.

Q. And what accommodations do you believe that she needs?

A. I think she needs to have double the usual time because of those measures of reading speed and oral reading fluency and other tests like the Nelson-Denny that reflected very slow reading on a reading comprehension test. I don't mean the rate. I mean the number of questions she was able to attempt

in the 20-minute time limit.

MR. BERGER: Thank you. That concludes our direct examination, Your Honor.

THE COURT: All right, Counsel. Rather than get started with cross-examination this afternoon, let's start tomorrow morning at 9:30. All right?

MR. BURGOYNE: Thank you, Your Honor.

THE COURT: We're adjourned.

(Proceedings concluded at 4:38 p.m.)

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Ann Marie Mitchell, CRR, RDR, RMR
Official Court Reporter

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